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8	UNITED STATE	ES DISTRICT COURT
9	NORTHERN DIST	TRICT OF CALIFORNIA
10		
11	FEDERAL TRADE COMMISSION,	Case No. 3:23-cv-02880-JSC
12 13	Plaintiff,	NON-PARTY GOOGLE LLC'S
14	v.	STATEMENT IN SUPPORT OF SEALING CERTAIN CONFIDENTIAL
15	MICROSOFT CORPORATION, et al.,	BUSINESS MATERIAL IN PARTIES' PRELIMINARY INJUNCTION
16	Defendants.	HEARING EXHIBITS
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VINSON & ELKINS LLP ATTORNEYS AT LAW SAN FRANCISCO		Case No. 3:23-cv-02880-JSC
STATE RELIVEDOCU	(GOOGLE LLC'S CIV. L. R. 79-5(F)(3) STATEMENT

I. INTRODUCTION

Non-Party Google LLC ("Google") produced certain documents containing confidential business material in response to a Civil Investigative Demand served by Plaintiff and subpoenas served by Plaintiff and Defendants. On June 14, 2023, the Court issued an order requiring the parties to file a joint statement by noon on Tuesday, June 20, 2023 identifying *inter alia* each exhibit each party intends to offer at the evidentiary hearing and "which exhibits are subject to a confidentiality designation and where on the docket the Court can locate a declaration in support of sealing as required by Local Rule 79-5."

On June 18, 2023, Plaintiff notified Google that it would include three documents produced by Google on its exhibit list for the preliminary injunction hearing in this case. As set forth below, each of these documents contains Google confidential material. On June 19, 2023, Defendant Microsoft Corp. ("Microsoft") notified Google that it plans to include eight documents produced by Google on its exhibit list for this proceeding. As set forth below, seven of these documents contain Google confidential material. Plaintiff and Microsoft have each filed an administrative motion pursuant to Local Rule 79-5(f) to consider whether these documents, among other exhibits proposed for use at the evidentiary hearing, should be sealed (ECF Nos. 128 and 138, respectively).

Accordingly, pursuant to Civil Local Rule 79-5(c) and (f), Non-Party Google submits this statement and the accompanying declaration of Scott Gerwin requesting that this Court maintain under seal Google confidential information from these ten documents, as identified below. In recognition of the Court's strong desire for public access, this statement is narrowly tailored, supporting the sealing of only one document in its entirety and small portions of the remainder of these documents.¹ Maintaining this information under seal is critical to protecting Google's legitimate confidentiality interests and competitive standing:

¹ Google understands that the parties have not yet filed all of their proposed exhibits with the Court. Accordingly, Google seeks the Court's direction regarding its preferred method for the submission of Google's proposed redactions of the exhibits identified below.

1 2 3	Exhibit No.	Document Name; Description of Document	Portion of Document Sought to be Sealed (Pages:Lines or Exhibit)	Reasons for Sealing
4	PX8003	Declaration of Dov Zimring; Declaration	(¶2:10-11; ¶15:10)	This section of the Declaration contains commercially-sensitive
		by Google employee		details regarding Google's
5		regarding creation and operation of Google's		financial investment in its Stadia business which, if
6		Stadia business.		disclosed, could reveal
7				Google's forward-looking business strategies. Legitimate
8				confidentiality and competitive interests warrant the sealing of
9				this highly confidential
10				information, the disclosure of which would cause injury to
11				Google that could not be avoided through any less
12				restrictive alternative to sealing.
13			(¶9; ¶20:1-2; ¶21:5)	This section of the Declaration
14				contains non-public and commercially-sensitive actual
15				and forecasted user totals for
16				Google's Stadia service that could give competitors insight
17				into Google's forward-looking business strategies. Legitimate
18				confidentiality and competitive
19				interests warrant the sealing of this highly confidential
20				information, the disclosure of
				which would cause injury to Google that could not be
21				avoided through any less restrictive alternative to sealing.
22			(¶21.9)	This section of the Declaration
23			(¶21:8)	contains the identities of
24				Google's customers, which implicates confidentiality
25				interests of third parties and, if
26				disclosed, could harm Google's ability to contract with third
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Case No. 3:23-cv-02880-JS0

1				parties on a confidential basis. The disclosure of the identities
2				of Google's customers or
3				partners would also allow Google's competitors to target
4				those customers in an attempt to
5				deprive Google of business. Legitimate confidentiality and
6				competitive interests warrant
7				the sealing of this highly confidential information, the
				disclosure of which would
8				cause injury to Google that could not be avoided through
9				any less restrictive alternative to sealing.
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11	PX7063	Dov Zimring Deposition Transcript;	(13:23-14:4)	This section of the Transcript contains proprietary details
12		Transcript of deposition		regarding the technical structure
13		of Google employee regarding creation and		of Google's cloud gaming service. This is highly
14		operation of Google's Stadia business.		confidential information that could allow competitors to
15		Stadia business.		replicate Google's services and
16				harm Google's ability to compete in offering future
17				services. Legitimate confidentiality and competitive
18				interests warrant the sealing of
				this highly confidential information, the disclosure of
19				which would cause injury to
20				Google that could not be avoided through any less
21				restrictive alternative to sealing.
22			(19:21-20:16)	This section of the Transcript
23				contains details regarding how Google assessed whether Stadia
24				was ready for public launch.
25				This is highly confidential information that could give
26				competitors insight into
27				Google's forward-looking business practices. Legitimate
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1 2 3		confidentiality and competitive interests warrant the sealing of this highly confidential information, the disclosure of which would cause injury to
4		Google that could not be avoided through any less
5		restrictive alternative to sealing.
6 7	(31:15-35:2)	This section of the Transcript contains details regarding how
8		Google distributed hardware and software bundles for Stadia. This is highly confidential
9		information that could give competitors insight into
10		Google's forward-looking business practices. Legitimate
11		confidentiality and competitive
12		interests warrant the sealing of this highly confidential
13 14		information, the disclosure of which would cause injury to
15		Google that could not be avoided through any less
16		restrictive alternative to sealing.
17	(41:16-42:10; 46:5- 48:2)	These sections of the Transcript contains details regarding
18		internal discussions related to Stadia's business model. This
19		is highly confidential information that could give
20		competitors insight into
21		Google's forward-looking business practices. Legitimate
22		confidentiality and competitive interests warrant the sealing of
23		this highly confidential information, the disclosure of
24		which would cause injury to Google that could not be
25		avoided through any less
26		restrictive alternative to sealing.
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1 2	(43:11)	This section of the Transcript contains an internal Google email address. The public does
3		not have an interest in learning internal contact information for
4		Google's employees, and thus,
5		legitimate confidentiality interests warrant the sealing of this information.
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7	(56:24-57:2; 57:10-	12) This section of the Transcript contains details regarding
8		Google's negotiations with a potential distributor of its
9		Stadia mobile app. This is highly confidential information
10		that could give competitors an advantage in negotiating against
11		Google and insight into
12		Google's forward-looking business practices. Legitimate
13		confidentiality and competitive
14		interests warrant the sealing of this highly confidential
15		information, the disclosure of which would cause injury to
16		Google that could not be avoided through any less
17		restrictive alternative to sealing.
18	(84:1-85:16; 87:15-	This section of the Transcript
19	88:21)	contains commercially-sensitive details regarding Google's
20		financial investment in its
21		Stadia business which, if disclosed, could reveal
22		Google's forward-looking business strategies. Legitimate
23		confidentiality and competitive
24		interests warrant the sealing of this highly confidential
25		information, the disclosure of which would cause injury to
26		Google that could not be
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Case No. 3:23-cv-02880-JSC

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1				avoided through any less restrictive alternative to sealing.
2			(141:19-21; 142:6-21)	This section of the Transcript
3			(141.17-21, 142.0-21)	contains a third party's
4				confidential information, the disclosure of which would
5				implicate that party's interest and would harm Google's
6				ability to partner with third parties on a confidential basis in
7				the future. Legitimate
8				confidentiality and competitive interests warrant the sealing of
9				this highly confidential information, the disclosure of
10				which would cause injury to Google that could not be
11				avoided through any less
12				restrictive alternative to sealing.
13	PX3058	Email from Nissim Betito to Stadia	(email addresses)	This email contains internal Google email addresses. The
14		personnel; Email from Nissim Betito to Stadia		public does not have an interest in learning internal contact
15		personnel regarding		information for Google's
16		Stadia's competitive position		employees, and thus, legitimate confidentiality interests warrant
17				the sealing of this information.
18	RX2011	Emails between A. Doronoichev, P.	(email addresses)	This email contains internal Google email addresses. The
19		Seybold, D. Zimring, L.		public does not have an interest
20		Soskin, M. Kallahalla, M. Gucwa re: What to		in learning internal contact information for Google's
21		say about 4K on PC?; Email discussion		employees, and thus, legitimate confidentiality interests warrant
22		regarding availability of certain Stadia		the sealing of this information.
23	DVCC14	features at launch	(1 11	
24	RX2014	Email from P. Gupta to D. Zimring, M.	(email addresses)	This email contains internal Google email addresses. The
25		Kallahalla, P. Seybold re: Hacker news and		public does not have an interest in learning internal contact
26		Forbes; Email		information for Google's
27				employees, and thus, legitimate

- Case No. 3:23-cv-02880-JS

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1		discussion regarding Forbes article		confidentiality interests warrant the sealing of this information.
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3	RX2039	Email from D. Cary to D. Zimring, A.	(email addresses)	This email contains internal Google email addresses. The
4		Doronichev, and E. Kraemer re: John		public does not have an interest in learning internal contact
5		Working Sessions on Strategy Narrative		information for Google's employees, and thus, legitimate
7		Notes; Email discussion regarding Stadia feedback from		confidentiality interests warrant the sealing of this information.
8		partners and gamers	(list bullets 5-7 under "John PartnerX")	This section of the email contains commercially-sensitive
9			John Farmer /	details regarding Google's
10				financial investment in its Stadia business which, if
11				disclosed, could reveal Google's forward-looking
12				business strategies. Legitimate
13				confidentiality and competitive interests warrant the sealing of
14				this highly confidential information, the disclosure of
15				which would cause injury to
16				Google that could not be avoided through any less
17				restrictive alternative to sealing.
18			(list bullets 5-6 under "John GamerX")	This section of the email contains commercially-sensitive
19			,	details regarding Google's financial investment in its
20				Stadia business which, if
21				disclosed, could reveal Google's forward-looking
22				business strategies. Legitimate confidentiality and competitive
23				interests warrant the sealing of
24				this highly confidential information, the disclosure of
25				which would cause injury to Google that could not be
26				avoided through any less restrictive alternative to sealing.
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1	RX2015	Document re: Stadia	(redact after "Details"	This document contains
2		Launch Retrospective; Document analyzing	on Page 2 – end)	commercially-sensitive details regarding Google's financial
3		internal decisions		investment in its Stadia
4		regarding the launch of Stadia		business, internal decision- making processes, and
		Stadia		software/hardware distribution
5				channels which, if disclosed, could reveal Google's forward-
6				looking business strategies.
7				Legitimate confidentiality and competitive interests warrant
8				the sealing of this highly
9				confidential information, the disclosure of which would
10				cause injury to Google that
11				could not be avoided through any less restrictive alternative
12				to sealing.
	RX3164	Email from Gotham	(email addresses)	This email contains internal
13		Team Food to Digest Recipients re: Digests –		Google email addresses. The public does not have an interest
14		9 Updates in 3 Topics;		in learning internal contact
15		Email discussion containing feedback		information for Google's employees, and thus, legitimate
16		from internal Stadia		confidentiality interests warrant
17		testers		the sealing of this information.
18	RX2123	Presentation re: Stadia 2020 Partnerships	(redact entirely)	This document contains the identities of Google's partners,
19		Review; Document		which implicates confidentiality
20		regarding review of all Stadia partnerships in		interests of third parties and, if disclosed, could harm Google's
		2020		ability to contract with third
21				parties on a confidential basis. The disclosure of the identities
22				of Google's partners would also
23				allow Google's competitors to target those customers in an
24				attempt to deprive Google of
25				business. This document also contains commercially-sensitive
26				details regarding Google's
27				financial investment in its Stadia business and internal
- ' II			<u> </u>	

1				decision-making processes
2				which, if disclosed, could reveal Google's forward-
3				looking business strategies.
4				Legitimate confidentiality and competitive interests warrant
				the sealing of this highly
5				confidential information, the disclosure of which would
6				cause injury to Google that
7				any less restrictive alternative
8				to sealing.
9	RX3103	Email from G.Lin to M.	(email addresses)	This email contains internal
10		Jognson, J. Figueroa,	,	Google email addresses. The
11		Stadia Staff re: Marketing Recap -		public does not have an interest in learning internal contact
		April Connect - 72 HR		information for Google's
12		Report; Email discussing reactions to		employees, and thus, legitimate confidentiality interests warrant
13		Stadia marketing data		the sealing of this information.
14				
15	II. THE	RE ARE COMPELLIN	C REASONS TO SEAL	L GOOGLE'S CONFIDENTIAL
	· -	INESS INFORMATION		L GOOGLE S CONFIDENTIAL
16	BUS	INESS INFORMATION	•	

Courts have broad discretion to prevent disclosure of "many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information." Phillips ex rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1211 (9th Cir. 2002) (citing Fed. R. Civ. P. 26(c)). The Ninth Circuit recognizes that public "access to judicial records is not absolute" and that litigants can overcome the presumption in favor of public access. Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006). Materials may be sealed if the designating party satisfies the "compelling reasons" standard: there must be "compelling reasons" to for sealing, which "outweigh the general history of access and the public policies favoring disclosure." Id. at 1178-79.

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business information," "internal business strategies," or "financial information" that could cause competitive harm to the designating party. Exeltis USA Inc. v. First Databank, Inc., No. 17-CV-04810-HSG, 2020 WL 2838812, at * 1 (N.D. Cal. June 1, 2020); Prescott v. Reckitt Benckiser LLC, 20-CV-02101-BLF, 2023 WL 2465778, at *2 (N.D. Cal. Mar. 9, 2023). The court may seal confidential materials if disclosure could result in "business competitors seeking to replicate [the company's] business practices and circumvent the time and resources necessary in developing their own practices and strategies." Roley v. Google LLC, No. 18-cv-07537-BLF, 2020 WL 13517498, at *1 (N.D. Cal. Apr. 28, 2020). Sealing is also appropriate if disclosure could cause "harm [to] the parties in future negotiations with existing customers, third-parties, and other entities with whom they do business." In re Qualcomm Litig., No. 3:17-cv-0108-GPC-MDD, 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017). Moreover, courts afford greater deference to non-parties, who "did not voluntarily put [its confidential information] at issue" in the litigation, so as to avoid "chill[ing] investigations in the future where third party documents are essential." *United States v. Bazaarvoice*, Inc., No. 13-cv-00133-WHO, 2014 WL 11297188, at *1 (N.D. Cal. Jan. 21, 2014) (granting motion to seal third-party trial exhibits).

The compelling reasons standard is met when the information at issue contains "confidential

III. THE COMPELLING REASONS TO SEAL OUTWEIGH ANY PUBLIC INTEREST IN THE REDACTED MATERIAL

Google's request to seal a portion of the parties' evidence is the result of its good faith effort to seek the sealing only of information that is confidential, commercially or competitively-sensitive, and cannot be protected from public disclosure through less restrictive means. Any public interest in disclosing the redacted information is outweighed by the prejudice that will result to Google, a non-party that "did not voluntarily put [its information] at issue in this litigation," if no protection

1 is granted. Bazaarvoice, Inc., 2014 WL 11297188, at *1 (noting importance of protecting third 2 parties); see also Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1097 (9th Cir. 2016). 3 IV. **CONCLUSION** 4 For the foregoing reasons, Google respectfully requests that the Court grant each party's 5 respective sealing request and maintain under seal Google's confidential information listed in the 6 chart above. Google has properly limited its request to narrowly targeted redactions of its 7 confidential strategic business and financial information. 8 Dated: June 21, 2023 VINSON & ELKINS LLP 9 10 By: /s/ Dylan I. Ballard 11 Dylan I. Ballard 12 Attorneys for Non-Party GOOGLE LLC 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 - 12 -

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